

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1395 of 2000

to

FIRST APPEAL No 1398 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

EXECUTIVE ENGINEER

Versus

TAHARALI ABBASALI BELIM

Appearance:

MR AD OZA for Appellants

MR AJ PATEL for Respondent No.1

MS NANDINI JOSHI, AGP for Respondent No.2

CORAM : MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.C.PATEL

Date of decision: 28/08/2000

ORAL (COMMON) JUDGEMENT

(Per: J.M. Panchal, J.)

Admitted. Mr. A.J. Patel, learned counsel waives service of notice on behalf of the claimant in each appeal. In view of the joint request made by the learned counsel for the parties, the appeals are taken up for final hearing today.

2. All these appeals which are filed under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908 are directed against common judgment and award dated January 31, 2000 rendered by Learned 2nd Joint Civil Judge (Senior Division), Mehsana in Land Acquisition Reference No.913 of 1998 to 916 of 1998 and as common questions of fact and law are involved in the appeals, we propose to dispose them of by this common judgment.

3. The Special Land Acquisition Officer No.2, Mehsana had made a proposal to the State Government to acquire agricultural lands of Village Kheralu, Taluka Kheralu for establishment of 220 KV Substation of Gujarat Electricity Board. On scrutiny of the said proposal, the State Government was satisfied that the agricultural lands of Village Kheralu were likely to be needed for the said public purpose. Accordingly, a Notification under Section 4(1) of the Land Acquisition Act, 1894 (the 'Act' for short) was issued which was published in the Official Gazette on October 1, 1992. The land owners whose lands were sought to be acquired were served with notice under Section 4 of the Act and they had filed their objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer No.2, Mehsana had forwarded his report to the State Government, as contemplated by Section 5A(2) of the Act. That report was considered by the State Government and the State Government was satisfied that the lands which were specified in the Notification published under Section 4(1) of the Act were needed for the public purpose of establishment of 220 KV Substation of Gujarat Electricity Board. Therefore, a declaration under Section 6 of the Act was made which was published in the Official Gazette on May 15, 1993. The interested persons were thereafter served with notices under Section 9 of the Act for determination of compensation. Having regard to the materials placed before him, the Special Land

Acquisition Officer offered compensation to the claimants at the rate of Rs.6/- per sq.m. in Land Acquisition Reference No.916 of 1998, Rs.7/- per sq.m. in Land Acquisition Reference No.913 of 1998 and Rs.7.50/- per sq.m. in Land Acquisition Reference Nos.914 and 915 of 1998 by his award dated October 1, 1994. The claimants were dissatisfied with the offer of compensation made by the Land Acquisition Officer and required him to refer the matters to the court for the purpose of determination of compensation. Accordingly, References were made to the District court, Mehsana which were numbered as Land Acquisition Reference Nos.913 of 1998 to 916 of 1998.

4. In the Reference Applications, it was pleaded by the claimants that their acquired lands were highly fertile and as they were raising various crops during the year and as the village was fully developed, they were entitled to compensation at the rate of Rs.30/- per sq.m. In response to the process served upon the appellants, they had filed joint written statement at Exh.4 contending inter alia that as the compensation awarded by the Land Acquisition Officer was just, fair and proper, the Reference Applications should be dismissed. In view of the common questions involved in the References, an order below Exh.6 was passed on February 25, 1999 to treat Land Acquisition Reference No.916 of 1998 as main case wherein the parties had led common evidence. On behalf of the claimants, one witness Hayatkha Imamkha was examined at Exh.9. The witness deposed before the court that the lands acquired were highly fertile and as irrigation facilities were available, the claimants were able to raise three crops in a year. According to the said witness, each claimant was earning Rs.30,000/- by way of agricultural income. The witness produced the order dated November 26, 1993 passed by District Development Officer, Mehsana at Exh.22 by which the District Development Officer, Mehsana had allotted lands of Village Kheralu to Gujarat Electricity Board for the purpose of setting up 220 KV Substation and staff quarters at the rate of Rs.25/- per sq.m. and claimed that on the basis of the said order, compensation should be paid to the claimants. The witness produced previous award of the Reference Court dated September 23, 1998 rendered in Land Acquisition Reference Nos.1031 of 1992, 1288 of 1992 to 1292 of 1992 and 2653 of 1993 to 2654 of 1993 at Exh.16 and claimed that as the lands which were previously acquired were similar in nature to the lands acquired in the present case, the claimants should be paid compensation on the basis of the said award also. In cross-examination by the appellants, the witness denied the suggestion that the claimants had accepted the

amount of compensation determined by the Land Acquisition Officer without any objection. The witness also denied the suggestion made on behalf of the appellants that there was no irrigation facilities available to the acquired lands.

5. On behalf of the claimants, one Baldevpuri Babugiri Goswami was examined at Exh.21 and another witness named Amrutlal Bijalbhai Parmar was examined at Exh.40. The witnesses examined by the appellants maintained before the court that the determination of compensation by the Land Acquisition Officer was just as well as proper and the Reference Applications were without any substance.

6. On appreciation of evidence laid by the parties, the Reference Court held that the lands which were allotted to the Gujarat Electricity Board vide Exh.22 were similar in all respects to the lands acquired in the present case and therefore Exh.22 was relevant as well as comparable for the purpose of determining market value of the lands acquired in the instant case. Placing reliance on Exh.22, the Reference Court by the impugned award has held that the claimant of Land Acquisition Reference No.913 of 1998 is entitled to additional compensation at the rate of Rs.18/- per sq.m. whereas claimant in Land Acquisition Reference No.915 of 1998 is entitled to additional compensation at the rate of Rs.17.50/- per sq.m. and claimant in Land Acquisition Reference No.916/98 is entitled to additional compensation at the rate of Rs.19/- per sq.m. giving rise to the present appeals.

7. Mr. A.D. Oza, learned counsel for the appellant submitted that in view of the poor potentiality of the lands acquired as well as other disadvantages noticed in the evidence of witnesses, the Reference Court should not have relied upon Exh.22 while determining compensation payable to the claimants and therefore the appeals should be accepted. What was claimed was that no cogent evidence was led by the claimants to establish that they were entitled to higher compensation and therefore the impugned award should be set aside. Mr. A.J. Patel, learned counsel for the claimants submitted that the District Development Officer, Mehsana had allotted agricultural lands to Gujarat Electricity Board for establishment of 220 KV Substation and staff quarters at the rate of Rs.25/- per sq.m. and therefore the said evidence, being relevant, is rightly relied upon by the Reference Court. It was argued that the certificate issued by Talati-cum-Mantri on February 24, 1992 which is

produced at Exh.15 indicates that the lands acquired are better in quality than the lands of GIDC and therefore the determination of the compensation made by the Reference Court should be upheld by this court. According to the learned counsel, the map which is on the record of the case at Exh.17 shows that Survey No.1301 which was disposed of by Exh.22 is adjacent to the lands acquired and therefore the award of the Reference Court based on Exh.22 should be upheld in these appeals.

8. We have heard the learned counsel for the parties and considered the paper book containing deposition of the witnesses and relevant documents supplied by the learned counsel for the parties. Though two witnesses were examined by the appellants, the document produced at Exh.22 was not disputed. Exh.22 indicates that land admeasuring 27522 sq.m. of Survey No.1301 of Village Kheralu was allotted to the Gujarat Electricity Board for establishment of 220 KV Substation and staff quarters at the rate of Rs.25/- per sq.m. by District Development Officer, Mehsana. This relevant piece of evidence was neither controverted nor disputed by the appellant in any manner. The Reference Court has given cogent and convincing reasons for placing reliance on Exh.22 while determining compensation of the lands acquired in the instant case with which we concur. As per the map at Exh.17, the boundaries of Survey No.1301 which was allotted to Gujarat Electricity Board vide Exh.22 and the boundaries of the lands acquired in the instant case are same. The assertion made by the witness of the claimants to the effect that Survey No.1301 which was disposed of in favour of Gujarat Electricity Board vide Exh.22 is similar in all respects to the land acquired in the instant case was never controverted by the appellants. Therefore, we are of the opinion that no error was committed by the Reference Court in determining market value of the lands acquired in the present case on the basis of Exh.22. The appellants failed to point out before the Reference Court that the order passed by District Development Officer produced at Exh.22 was set aside or that the said order was modified by any appellate or revisional authority. Even before this court, it is not the case of the appellant that Exh.22 was in any way modified by any authority. Having regard to the totality of the facts and circumstances of the case, we are satisfied that a just award has been rendered by the Reference Court determining market value of the lands acquired in the instant case. The court of appeal will interfere only if there is wrong application or misapplication of the relevant factors or principles of compensation. In our view, no ground is made out by

the appellant to interfere with the impugned judgement in the present group of appeals. The appeals, therefore, cannot be accepted and are liable to be dismissed.

9. For the foregoing reasons, the appeals fail and are dismissed with no orders as to costs.

(J.M. Panchal, J.)

(M.C. Patel, J.)

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